**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

Chapter VIII, Rule 32(2) (b)
Description of case

**Writ Petition No. 147 of 2005 (S/B)**

Date of decision: 22nd July, 2005

A.F.R. (Approved for Reporting)

Not Approved for Reporting

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgement when it is put up before the Judge for signature.

**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**Writ Petition No. 147 of 2005 (S/B)**

Islam Khan S/o Sri Sahab Khan,
Serving as Horticulturist,
Secretariat Uttaranchal, Dehradun. …….. Petitioner

Versus

1. State of Uttaranchal,
through secretary, Horticulture Department,
Govt. of Uttaranchal, Dehradun.
2. Director,
Horticulture and Food Processing,
Uttaranchal, Chaubattia, Ranikhet,
District Almora.
3. Sri D.K. Joshi,
Senior Horticulture Inspector,
Government Gardens, Dehradun. ……. Respondents

Mr. Manoj Tewari, Advocate for the petitioner.
Mr. J.P. Joshi, Addl. Chief Standing Counsel for the State of Uttaranchal.

**Coram: Hon. Cyriac Joseph, C.J.**
**Hon. B.C. Kandpal, J.**

**JUDGMENT**

**CYRIAC JOSEPH, C.J. (Oral)**

1. The petitioner is a Horticulturist in the service of the Government of Uttaranchal, While working s Horticulturist in the Government Secretariat at Dehradun, he was transferred to the Horticulture Directorate at Chaubattia, Ranikhet as Potato Seed Officer as per Annexure 8 order dated 27.06.2005. It is stated in Annexure 8 order that the petitioner is transferred on administrative grounds in view of the complaints received against him. Challenging the said order of transfer, the petitioner has filed this writ petition.

2. In view of the assertion of the petitioner that he had an unblemished career and that he was appreciated by several authorities in the Government and that the impugned order of transfer is vitiated by illegalities and malafides, when this writ petition came up for

admission on 20.07.2005 we directed the learned Addl. Chief Standing Counsel for the State of Uttaranchal to make available the file relating to Annexure 8 order dated 27.06.2005. In compliance with the above direction, the learned Addl. Chief Standing Counsel has made available the file and we have perused the file.

3. It is seen from the file that several complaints were received by the Government regarding the irregularities committed by the petitioner in connection with his official duties and the Government ordered a detailed departmental enquiry into the allegations against the petitioner and also directed to transfer the petitioner form the present post. It is also seen that, although an enquiry officer was appointed, late the second respondent Director of Horticulture pointed out to the Government that since the petitioner was performing his duties at places like the Raj Bhawan, Chief Minister's Residence and Government Secretariat and in view of the nature of the irregularities alleged against hi, it is better to conduct a vigilance enquiry instead of departmental enquiry. The said suggestion of the second respondent has been accepted by the Government and a vigilance enquiry has been ordered. Thus the transfer of the petitioner was ordered in view of the serious allegations of irregularities and misconduct which are the subject matter of the proposed enquiry.

4. When a departmental / vigilance enquiry of disciplinary proceeding is contemplated or ordered against a Government employee, it is open to the Government / disciplinary authority to consider and decide whether it is desirable to retain the employee in the same post or place and whether the continuance of the employee in the same post or place during the period of enquiry or disciplinary proceedings will be conducive for the conduct of a proper and fair enquiry / disciplinary proceedings. It the Government / disciplinary authority considers that his continuance in the same place or post is not desirable and that such continuance will not be conducive for the conduct of a proper and fair enquiry / disciplinary proceedings, the

Government / disciplinary authority has got two otiose: (i) to place him under suspension pending enquiry / disciplinary proceedings or (ii) to transfer him to another post or place. If a transfer will be sufficient to ensure proper and fair enquiry / disciplinary proceedings, Government / disciplinary authority may only order transfer of the employee and may not place him under suspension, because, an order of suspension visits the employee with serious civil consequences including monetary loss and loss of reputation. But if a transfer will not be sufficient for the said purpose, the Government / disciplinary authority may place him under suspension. An employee can be placed under suspension also when the Government / disciplinary authority, having regard to the serious nature of the allegations and the nature of the post held by him, is of the opinion that it is necessary in public interest to place him under suspension in order to maintain proper discipline in the service and keep up the morale of the honest and dutiful employees or to inspire confidence and trust in the minds of the public or to protect the image and prestige of the Government / department. It is essentially for the Government / disciplinary authority to decide whether transfer or suspension is necessary in the given circumstances. Though the Government / disciplinary authority has the discretion in the matter, the said discretion has to be exercised properly, fairly and bonafide and only after considering all relevant aspects. A proper, fair and bonafide exercise of the said discretion by the Government / disciplinary authority cannot be interfered with by the court. Though the order passed by the authority may not contain detailed reasons for deciding to transfer or suspend an employee, the relevant file should disclose or reflect that the authority concerned had applied its mind to all the relevant aspects and exercised its discretion properly, fairly and bonafide. In the case of suspension, the relevant file should disclose or reflect that the authority concerned had come to the conclusion that in the given circumstances suspension itself was necessary and that transfer was not sufficient. We are constrained to observe that very often the authority concerned fails or omit to record even on the file the reasons for deciding to suspend the employee,

instead of transferring him to another post or place. However, we hasten to add that the Court will not quash such an order of suspension unless the files or circumstances show that the discretion was not exercised by the authority properly, fairly and bonafide.

5. In this case, the authority concerned has decided only to transfer the petitioner to another station. There is no material to suggest that the exercise of discretion by the authority was not proper, fair or bonafide. The impugned action of the Government cannot be said to be illegal or arbitrary and hence, the impugned order is not liable to be quashed by the High Court in exercise of the powers under Article 226 of the Constitution of India.

6. Learned counsel for the petitioner contended that the petitioner is due to retire in January, 2006 and as per the guidelines issued by the Government, an employee who is due to retire within a period of two years, is not ordinarily liable to be transferred. As rightly stated by the learned counsel, the guidelines only say that a Government employee who is due to retire within a period of two years is not **ordinarily** liable to be transferred. It implies that he can be transferred if special circumstances exist. The petitioner's transfer was not in the ordinary circumstance. It was in the special circumstance where a departmental enquiry was ordered against the petitioner in respect of serious allegations of irregularities and misconduct. Hence, there is no violation of the above-mentioned guidelines issued by the Government. Even otherwise, we are of the view that the said guidelines have no statutory force and that they are not enforceable through a writ issued under Article 226 of the Constitution of India.

7. Learned counsel also submitted that the petitioner's wife is seriously ill and there is nobody else to take care of her. But any such sympathetic consideration cannot weigh with this Court in a case of this nature and hence it cannot be a valid ground for interfering with the impugned transfer.

8. For the reasons stated above, there is no merit in the writ petition and the writ petition is dismissed in limine.

The registry is directed to forward a copy of this judgment to the Chief Secretary, Government of Uttaranchal for information and circulation among all the Secretaries to Government and the Heads of Departments.

**(B.C. Kandpal, J.)** **(Cyriac Joseph, C.J.)**
**22.07.2005** **22.07.2005**

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